

304.15-710 Viatical settlement provider's duties of disclosure to viator.

- (1) With each application for a viatical settlement contract, a viatical settlement provider or viatical settlement broker shall provide the viator a copy of the office's consumer guide relating to viatical settlements and shall disclose the following information to the viator no later than the date that the application for a settlement contract is signed by all parties:
 - (a) That there are possible alternatives to viatical settlement contracts including but not limited to accelerated benefits or policy loans offered under the viator's policy;
 - (b) That some or all of the proceeds of the viatical settlement may be taxable under federal income tax laws and state franchise and income tax laws, and that assistance should be sought from a personal tax advisor;
 - (c) That proceeds of the viatical settlement contract could be subject to the claims of creditors;
 - (d) That receipt of the proceeds of a viatical settlement contract may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and that advice should be obtained from the appropriate government agencies;
 - (e) That the viator has a right to rescind a viatical settlement contract before the earlier of thirty (30) calendar days of the date it is executed by all parties or fifteen (15) calendar days after the receipt of the proceeds of the viatical settlement contract by the viator. If exercised by the viator, rescission is effective only if both notice of the rescission is given, and within the rescission period all proceeds, and any premiums, loans, and loan interest are repaid to the settlement provider. If the insured dies during the rescission period, the settlement contract shall be deemed to have been rescinded, subject to repayment of all viatical settlement proceeds and any premiums, loans, and loan interest to the viatical settlement provider. The viatical settlement provider shall effectuate the change of ownership of the policy or certificate to the viator immediately upon effective rescission by the viator;
 - (f) That entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy, to be forfeited by the viator and that assistance should be sought from a financial adviser;
 - (g) That funds will be sent to the viator within three (3) business days after the viatical settlement provider has received the insurer's or group administrator's acknowledgment that ownership of the policy has been transferred and the beneficiary has been designated pursuant to the viatical settlement contract;
 - (h) That the disclosure document shall contain the following language:

"All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the viatical

settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two (2) years."; and

- (i) That the insured may be contacted by the viatical settlement provider or its authorized representative for the purpose of determining the insured's health status. This contact shall be limited to once every three (3) months if the insured has a life expectancy of more than one (1) year, and no more than once per month if the insured has a life expectancy of one (1) year or less.
- (2) A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider and provide the following information:
 - (a) State the affiliation, if any, between the viatical settlement provider and the issuer of the policy to be acquired pursuant to a settlement contract;
 - (b) State the name, address and telephone number of the viatical settlement provider;
 - (c) If a policy to be acquired pursuant to a viatical settlement contract has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be acquired pursuant to a settlement contract, the viator shall be informed of the possible loss of coverage on the other lives and shall be advised to consult with his insurance producer or the company issuing the policy for advice on the proposed viatical settlement contract;
 - (d) State the dollar amount of the current death benefit payable to the viatical settlement provider under the policy. The viatical settlement provider shall, if known, also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy, and the viatical settlement provider's interest in those benefits; and
 - (e) State the name, business address, and telephone number of the independent third party escrow agent, and the fact that the viator may inspect or receive copies of the relevant escrow or trust agreements or documents.
- (3) If the viatical settlement provider transfers ownership or changes the beneficiary of the policy, the viatical settlement provider shall communicate the change in ownership or beneficiary to the insured within twenty (20) days after the change.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 58, sec. 9, effective June 20, 2005. -- Amended 2000 Ky. Acts ch. 472, sec. 9, effective July 14, 2000. -- Created 1998 Ky. Acts ch. 403, sec. 4, effective July 15, 1998.

Legislative Research Commission Note (6/20/2005). Ky. Acts ch. 11, 85, 95, 97, 09, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to

agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.